



(Union) filed exceptions to the proposed changes on April 15, 1993. This matter was heard by the undersigned hearing officer on June 17, 1993. The parties had until the close of business on July 1, 1993 to complete any post-hearing submittals.

#### FINDINGS OF FACT

1. The City of Nashua is a "public employer" within the meaning of RSA 273-A:1 X.
2. United Auto Workers, Local 2232 is the duly certified bargaining agent for clerical and technical employees of the City.
3. The composition of the original bargaining unit in 1991 was the product of an agreement reached by the parties prior to the certification election which was held on May 2, 1991.
4. The current composition of the bargaining unit was modified by agreement of the parties as filed on December 24, 1992 which includes "clerical, technical employees and property coordinator" and which excludes "Deputy Voter Registrar, Assessors I, II, Engineer III PWD, Administrative, Professional, all non-clerical in Community Health, Environment Health, Community Services, Welfare, Custodians at District Court, Edgewood and Woodlawn Cemeteries, Public Library Secretary/Receptionist to the Mayor, Accountant II, Systems Application Analysts I, II, III and IV."
5. The maintenance foreman at the Waste Water Treatment Plant (WWTP) supervises 7 employees, 5 mechanics and 2 electricians. He is responsible for the maintenance and repair of WWTP facilities including 14 pumping stations. He is a Grade IV WWTP operator and has limited purchasing authority. He has little contact with other, off-premises City departments. These responsibilities, duties and working conditions have remained unchanged since the union was organized in 1991. The sole incumbent in this position indicated his opposition to the organizational efforts from the outset and exhibited no self-felt community of interest with other unit employees.
6. The operations foreman at the WWTP supervises 11 operators and 2 laborers. He is responsible for dosages, inventories of toxic chemicals, and worker safety issues. He is a Grade IV WWTP operator and has no counterpart (by equivalent job functions)

in other City Departments. He has little, if any, contact with other off-premises City departments. These responsibilities, duties and working conditions have remained unchanged since the union was organized in 1991. The sole incumbent in this position exhibited no self-felt community of interest with other unit employees.

7. There is no evidence that either the maintenance foreman or the operations foreman exercises "supervisory authority involving the significant exercise of discretion" such as to warrant their exclusion from the bargaining unit under RSA 273-A:8 II or that or that conditions have changed over the past two years to warrant exclusion under those provisions now when it was not appropriate earlier.
8. The Secretary III is secretary to the superintendent of the WWTP. Organizationally, the superintendent reports to the BPW Director who reports to the Board of Public Works. The record reflects no evidence that labor relations functions are planned and finalized at the WWTP level. The Secretary III is certified in CPR and is trained in the use of a gas mask and exposure precautions. Notwithstanding the fact that she signed an organizational (Union) card, the sole incumbent in this position exhibited no self-felt community of interest with other unit employees testifying, "I'm not a union person." The responsibilities, duties and working conditions of the Secretary III have remained unchanged since the union was organized in 1991.
9. The three positions under consideration in the pending petition involve job functions not common to employees of other City departments who are part of their bargaining unit. Because the bargaining unit encompasses employees in a number of City departments, there is no contemplated or expected commonality of job functions.
10. The various City departments having employees in this bargaining unit are located in numerous locations throughout the City. It is not uncommon for employees in this bargaining unit to be geographically separated from other employees in the same bargaining unit, e.g., at City Hall,

Street, Landfill, Parks and Recreation, and WWTP facilities.

11. At the time of the hearing in this matter, the parties purportedly had reached a settlement on a collective bargaining agreement (CBA), pending approval by the aldermen. The disposition of the three positions under consideration in these proceedings was not resolved in those negotiations.
12. There is no evidence that there was any quid pro quo supporting the settlement in this case in exchange for agreement on or resolution of the issue of the three positions under consideration in these proceedings. Neither party has waived its right to bring this case to the PELRB.

#### DECISION AND ORDER

As was the case in Case No. M-0639:1 involving the Nashua professional employees' bargaining unit, there is a consistent theme in this case, too. Specifically, there is no evidence that the duties, responsibilities or working conditions of the three petitioned-for incumbents changed between the date of the certification of the bargaining agent in May of 1991 and the date of these proceedings. Rule 302.05 (a) permits modifications to bargaining units "where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed." That has not happened. Thus, there is cause to deny the petition.

That cause is further supported by that part of Rule 302.05 (a) which provides that a modification petition may be denied if it "attempts to modify the compensation of a bargaining unit negotiated by the parties [as happened here] and the circumstances alleged to have changed actually changed prior to negotiations on the collective bargaining agreement presently in force." Based on findings in Case No. M-0639:1 that the settlement occurred on May 12, 1993 and the April 1, 1993 filing date of the pending petition, the foregoing provisions of Rule 302.05 (a) would apply to bar the exclusions sought in this petition.

Notwithstanding the generality of the foregoing to all three positions under consideration, the Secretary III position deserves special comment in light of Appeal of City of Laconia, 135 NH 421 (1992). The record in this case does not support a confidential exclusion for this employee because there is no evidence of her participation in confidential labor relations functions. RSA 273-A:1 I (c). Even were they to have been alleged, the confidential exclusion for a secretarial employee two levels below the decision makers at the Board of Public Works would be suspect. The

involvement must be actual and necessary to be protected. Here, neither was there involvement, nor, if there had been, was there any evidence that it was crucial to the importance of the employer's labor relations functions. When and if this were to occur, the necessary condition precedent may be met to warrant reconsideration by way of a new modification petition.

Lastly, RSA 273-A:8 I speaks to the need for a community of interest. To the extent those requirements were satisfied in 1991, they remain satisfied today. Conditions of employment and organizational functioning remain unchanged. RSA 273-A:8 I (a) and (d). As for the conspicuous lack of self-felt community of interest reference in the findings, the incumbents have found their own remedy -- don't belong and don't participate. It would be imprudent to exclude their successors from the protections and entitlements of RSA 273-A merely because of the feelings of the current incumbents.

The petition must be, and hereby is, DENIED.

So ordered

Signed this 6th day of August, 1993.



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PARKER DENACO  
HEARING OFFICER